supported, for example, at pages 21-24 of the specification. An example of the subject monitoring and routing system of these claims is the M/R system 366 in the cited portion of Applicant's specification. As explained below, claims 47- 51 are not separately classifiable from claims 24-31. It is therefore submitted that consideration of claims 47- 51 is warranted.
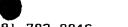
Applicant discloses and claims a system for transmitting packets preferably using a voice over intellectual property (VOIP) protocol in computer network. If the packet transmission from a first location to a second location in a computer network is not accomplished in a defined desired manner initial, then Applicant systems transmits from the first location to a third location and from the third location to the second location in the computer network. Consequently, packet transmission is achieved. In contradistinction, the art of record attempts to transmit packets in a computer system. If the transmission is not accomplished, then transmission is made over a PSTN. PSTN is analog transmission and is also known in the art as POTS. POTS stands for plain old telephone service.

Attention is directed to the recitations of claims 24 and 29, which are the independent claims. These claims recite transmitting data packets a said first location to a second location, evaluating said data packets to determine the effect on said data packets of transmitting packets from said first location to said second location and if said evaluating determines the effect on said data packets to be undesirable, sending said data packets to a third location prior to sending said data packets to said second location. Applicant explicitly recites rerouting of packets. Beyda, at column 5, line 67, states that the call router 14 will "automatically reroute the call over the PSTN ..." (emphasis supplied) The PSTN is by definition a circuit switching network. Circuit switching networks do not carry packets. Therefore, Beyda is not rerouting packets. At column 2, lines 28-30, Beyda specifically teaches that a call which is proceeding over a voice-over-data network that encounters

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unacceptable delays is removed from the voice-over-date network and routed over another network. At column 2, line 39, the other network is identified as a PSTN.

The recitation of rerouting packets is found only in Applicant's claims and specification. Beyda's specification and the recitations in Beyda's claims teach that rerouting is done through a network that is different from the network in which the packets were transmitted and that the different network is not in internet protocol (IP) network. It is therefore submitted that the rejection under 35 U.S.C. 102(e) does not meet the requirements of MPEP 2131. This section states, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Applicant recites rerouting packets. Beyda makes no express disclosure of rerouting packets. Beyda discloses rerouting calls. It is submitted that rerouting of calls is not an inherent disclosure of rerouting of packets because Beyda expressly teaches that the rerouted call goes over a PSTN network or other network that is not a voice-over-data network. This is an explicit disclosure of a network that does not have a protocol for utilizing packets. Consequently, there is not inherent disclosure of rerouting packets as explicitly recited by Applicant. Since there is no express or inherent disclosure, under the criteria of MPEP 2131, this ground of rejection merits withdrawal.

Another express recitation by Applicant in the claims at issue is transmission from a first location to a third location to a second location when a call is rerouted. The last paragraph on page 7 of the Action states, "Regarding claims 25 and 30, the first, second, and third location comprising interfaces is inherent in Beyda since interfaces are required for the call processors to communicate through either the PSTN or the Internet." Applicant respectfully traverses this assertion. Finding first, second and third locations in Beyda can only be done starting from a reading of Applicant's claims and then using Applicant's claims as a checklist. Applicant has specifically defined locations in the specification as geographic locations. Applicant illustrate locations as being separate geographical locations. Each interface, e.g.,

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interfaces 360, 376 and 384 specified at page 23 of the specification ands illustrated in Figure 5 are a separate geographical locations. Beyda, in Figure 1, discloses only two geographic locations, the local terminal 18 and the local terminal 36. There is no suggestion of a third location.

Assuming for the sake of argument that Beyda discloses a third location (which it does not), the disclosure is contrary to Applicant's express recitations. Applicant recites first and second locations. The first location is the source of a packet, and the second location is the destination of the packet. Claims 24 and 29 each explicitly recite that the first location and the second location are each on the computer network. Applicant's third location transmits to his second location. Perhaps Beyda's second trunk 26 at the terminal 18 could be his first location. His second location could be a digital input of the remote terminal 36, i.e., the portion of the remote terminal 36 receiving the packets. These are both on a computer network. Perhaps the rejection is suggesting that Beyda's first trunk 24 is a third location. Beyda's first trunk 24 (his putative third location) can not be connected to the portion of the remote terminal 36 receiving packets. The first trunk 24 is not on the computer network. Beyda's first trunk 24, as explained above, cannot handle packets. The only place Beyda's putative third location can send a call (not packets) is to a fourth location, namely the analog input to the remote terminal 36, as specifically taught by Beyda. This does not constitute and express or inherent disclosure as required by MPEP 2131 to make out a rejection.

Although this rejection is made under 35 U.S.C. 102, it has characteristics of a rejection under 35 U.S.C. 103(a) in that the rejection suggests a reconstruction of the Beyda networks. Beyda does not connect his putative third location to his second location. It is neither inherently done nor obvious to do so. Connecting Beyda's "third location" to its "second location" would render it inoperative. Under MPEP 2142.01, which deals with obviousness, "The proposed modification cannot change the principle of operation of a reference." Analog circuits do not handle

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packets. To find inherency in Beyda would require a change in its operating
principle. This is not permitted by MPEP 2142.01. Applicant recites sending data
packets to a third location prior to sending them to a second location. Applicant can
do this because the third location is on the computer network. Beyda does not
disclose or suggest a third location on a computer network.

Applicant respectfully traverses the assertion on page 5 of the Action that,
"Regarding claim 27, Beyda teaches two different routes that the packet can take in
the network." Beyda states that transmission proceeds over only one point to point
route on a computer network. If certain delays are encountered, the transmission is
removed from the computer network and transmitted over only one point to point
route on a PSTN. Beyda does not teach selecting one of two alternate paths within
one network. Beyda teaches that there is only one path on each of two networks.   ?
Once again, Beyda's PSTN does not carry packets. In Beyda, a packet can take
one route on one network or a call can take another route on a separate network.
This is not what applicant claims.

Applicant's use of all digital transmission is supported throughout the
specification. Exemplary reference may be had to page 23 of the specification. The
example is given of transmission of packets from Interface 376 to Interface 384. An
alternative path from Interface 376 to Interface 384 is through Interface 382. At
page 23, lines 1-2, Applicant states that communications occur over a packet-
switched network, the Internet or direct connections. Each of these modes allows
packet transmission. Again, at page 24, lines 6-8 Applicant explains that packets
can take a first path or a different path within a network. As explained at page 24,
lines 11-19, Applicant has no need to utilize a PSTN between the first location and
the second location. A PSTN is not used at all unless final call destination is not
close to an Interface at the second location. Then, after completion of routing of
packets in accordance with the claims, a call may be coupled from an Interface via a
PSTN to a final destination. The art of record deals with performing either an analog

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transmission or a packet transmission. It does not disclose rerouting of packets as claimed by Applicant. It is therefore submitted that the present rejections merit withdrawal.

New claims 47- 51 are presented to a system that can perform the method of claims 24-31. A like number of claims have been canceled. No additional fee is due. These claims are explicitly supported, for example, at pages 21-24 of the specification. An example of the subject monitoring and routing system of these claims is the M/R system 366 in the cited portion of Applicant's specification. The terminology "path characteristic packet" is supported for example at page 22, line 20. The recitation that the management and routing system controls routing is supported for example at page 22, lines 15-16. As explained below, claims 47- 51 are not separately classifiable from claims 24-31. It is therefore submitted that consideration of claims 47- 51 is warranted.

The Action pointed out that claims 24-31 in Group III are drawn to a scheme for evaluating and directing packets, which is classifiable in class 370, subclass 241. Claims 47-51 are also is drawn to a scheme for evaluating and directing packets. It is noted that apparatus claims 1-8 and 14-23 as originally filed were placed in Group I as being classifiable in class 370, subclass 356. Excerpts from the classification schedule of class 370 are attached. Class 356 is entitled, "Routing circuit switched traffic through a packet switching network." Note that there is no recitation of circuit switching (e.g., transmission in a PSTN) in claims 47-51. Note also that at page 25, lines 9-19, Applicant points out that after the routing is completed, circuit switching is used only in some situations, and then only after the call leaves the claimed system. It is submitted that claims cannot be home classed in a subclass that requires elements that are generally absent from the claimed system. It is therefore submitted that claims 47-51 warrant consideration. It is further submitted that claims 47-51 do not require a separate field of search.

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CONCLUSION

Applicant has demonstrated that claimed recitations are not disclosed in the art of record and that withdrawal of the rejection under 35 U.S.C. 102(e) is warranted. Further, new claims 47-51 are classifiable with claims 24-31. For the reasons pointed out above, it is believes that this application is in condition for allowance and such action is respectfully solicited. If there remain any issues to be discussed, Examiner Jung is invited to telephone the undersigned attorney.

Respectfully submitted,

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241 **DIAGNOSTIC TESTING (OTHER THAN SYNCHRONIZATION):**
This subclass is indented under the class definition. Subject matter wherein at least part of a multiplex system is to be evaluated for its performance.

> (1) Note. This subclass may include a sole monitoring operation, i.e., a terminal which displays or indicates the operating state of the multiplex communication system or element.

> (2) Note. Testing for the purpose of synchronization in the multiplex communication via time channels is not classified in this subclass.

SEE OR SEARCH THIS CLASS, SUBCLASS:

216+,   for fault recovery in a multiplex system.

229+,   for preventing or controlling an overload condition in a multiplex system.

503+,   for monitoring of synchronization which may include testing for the purpose of synchronization.

SEE OR SEARCH CLASS:

340,   Communications: Electrical,   subclasses **500+** for a generic conditional responsive alarm system.

375,   Pulse or Digital Communications,   subclass **224** for testing of a digital communication system.

379,   Telephonic Communications,   subclasses **1.01** through **35,** for testing of a telephone system.

714,   Error Detection/Correction and Fault Detection/Recovery,   subclasses **25+** for diagnostic testing of a generic information processing system organization which is not limited to multiplex communication, and subclasses 712+ for generic transmission facility testing.

352   **Combined circuit switching and packet switching:**
This subclass is indented under subclass 351. Subject matter wherein the switching network has both (a) a switch which establishes a path between a source and destination with the path being held for the duration of the communication, and (b) a switch which routes information based on an address associated with the information data in a channel which is only occupied for a duration of the time required to transmit the information data and the associated address.

SEE OR SEARCH THIS CLASS, SUBCLASS:

357+,   for a circuit switch.
389+,   for a packet switch.

▯ 353 **Switching network having common elements to handle both circuit switched traffic and packet switched traffic:**
This subclass is indented under subclass 352. Subject matter wherein same structures in a switching network perform routing of both circuit switched and packet switched data.

▯ 354 **Switching network having separate elements to handle circuit switched traffic and packet switched traffic:**
This subclass is indented under subclass 352. Subject matter wherein noncommon structures within a switching network respectively and separately perform routing of circuit switched and packet switched data.

▯ 355 **Routing packets through a circuit switching network:**
This subclass is indented under subclass 352. Subject matter wherein packet switched traffic is adapted so as to be routed through a switching network designed for circuit switched traffic.

▯ 356 **Routing circuit switched traffic through a packet switching network:**
This subclass is indented under subclass 352. Subject matter wherein circuit switched traffic is adapted so as to be routed through a switching network designed for packet switched traffic.

http://www.uspto.gov/web/patents/classification/uspc370/defs370.htm   2/27/2004

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